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Cooperative Review

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BENS-DISA Cooperative Review

Acquisition Governance

Project description:

BENS, in cooperation with the Defense Information Systems Agency (DISA), reviewed several procurements of an information technology (IT) capability or service with a goal of identifying and quantifying legislative, regulatory, cultural and organizational impediments that contribute to the breakdown in the overall acquisition system. DISA was a particularly apt target for this pilot project because IT is a distinct and different subset of all the Pentagon's procurements and because DISA operates in a joint environment managing acquisitions for all the military services.

Chronology:

- In February 2008, Deputy Secretary of Defense Gordon England sent a letter to General Boyd encouraging BENS to "focus on the process burdens and constraints…[to] highlight how the Department can acquire relevant cutting-edge information technology and services more effectively."
- A series of interviews with DISA and other officials sought to identify specific procurement inefficiencies from the program manager perspective
- Five programs were reviewed:
  - Net-enabled Command Capability (David Bennett, Deputy Program Executive Officer for NECC)
  - Net-centric Enterprise Services (Rebecca Harris, PEO for Global Information Grid Enterprise Services)
  - Defense Information System Network (Linda Safford, DISN Program Manager)
  - Commercial Satellite Communications (COMSATCOM) (Becca Cowen-Hirsch, PEO SATCOM, Teleport and Services)
  - Defense Logistics Agency Enterprise Resource Planning (Dave Falvey, PEO for DLA's Business Systems Modernization Program)
- Additional insight was sought from senior DISA officials: John Garing, DISA Director of Strategic Planning and Information; Jana Jackson, DISA Corporate Outreach Executive; Bobbie Stempfley, DISA Deputy Chief Information Officer; Martin Gross, DISA Deputy Component Acquisition Executive; Robert Gorman, DISA General Counsel, and Dr. Steven Hutchison, DISA Test & Evaluation Executive
- In late May 2008, BENS produced a working draft that detailed five major sources of instability in the acquisition of IT process. These sources are considered by many to be at the core of instabilities hindering the DoD acquisition process as-a-whole
- BENS then attempted to trace the proximate and ultimate causes of these instabilities to their sources in the law, regulation, culture and/or organization of the acquisition framework
- This final report, dated July 2008, completes BENS review and concludes with two sets of recommendations:
  - For the Department of Defense: What can be done now
  - For the IT Acquisition Community: What should be sought for the future

BENS' Goal:

The procedures developed and lessons learned from the pilot project with DISA are intended to inform a broader BENS effort on reforming defense acquisition law & oversight. We want to encourage the next Congress and Administration to confront the challenge of changing two decades of accumulated defense acquisition law, regulation and policy that have defined a culture and created an organization described as "distorted, inefficient, and ineffective."

Acquisition Governance – Sources of Instability

More than 20 acquisition process performance issues emerged from the interviews. Comparing shortlists developed independently by BENS and various DISA officials, we condensed the sources of instability in the acquisition process to a more manageable list of five:

- Application of acquisition law, regulation and policy
- Managing joint programs and reacting to Service-specific concerns
- Management flexibility vs. oversight
- Funding stability for joint-service programs
- Lack of ownership on part of oversight organizations

We then sought to relate these instabilities to their causes in any or all of the prescribed sources of possible impediments: legal, regulatory, cultural or organizational.

A discussion of the findings, causes and recommendations follow:

Sources of Instability:

Application of Acquisition Law, Regulation and Policy

Finding: The DoD 5000-series documents, which govern the defense acquisition process, are better suited to the procurement of hardware, and do not adapt well to the IT or software environment. Further, applying regulations and policies designed for development and procurement of items developed exclusively for the government can lead to inefficient and often unnecessary process steps when the product is essentially commercial or non-developmental in nature.

Discussion: Dating to the Federal Acquisition Streamlining Act of 1994 preference has been for the procurement for government use of commercial items and services to take advantages of the technological advances and methods available in the private sector. "Methods" would also imply the use of commercial procurement practices or processes, which rely almost exclusively on competition as the basic decision factor. In contrast, DoD's process is based on a complex system designed to promote fairness and prevent abuse, not to produce the best systems in the shortest time possible. Federal acquisition norms include certain concessions to political and social engineering norms, so there are limits to the commercial practice that could be employed. However, in the purchase of commercial items some federal practices, such as duplicative regulatory certification requirements/re-certification for essentially commercial items, are counterproductive. These impediments add time and cost and contribute to a program manager's inability to exert independent control.

Managing Joint Programs and Reacting to Service-specific Concerns

Finding: Programs designed to be deployed to all the military services and DoD agencies are particularly prone to requirements creep. That is, to satisfy the concerns of all participants, "needs" are often confused with "wants" and the requirements on-paper for the program begin to grow. If the design is not contained during pre-systems acquisition, there is no chance of meeting cost and schedule goals.

Discussion: A major driver of the requirements growth phenomena is the inability—either through lack of available incentives or inflexible regulation or policy—to achieve Service buy-in prior to program initiation. Simply put, there is no forcing function that commits the end-user community to maintain program discipline and, perhaps, accept the 80 percent solution that satisfies the basic joint requirement rather than the Service-specific desired capability. There is no cost penalty assessed on the user for their demands. Adding to the instability is the lack of centralized, standardized certification procedures, which in turn leads to a proliferation of Service-unique testing and certification procedures. The Developmental Operational Test & Evaluation (DOT&E) and the Operational Test & Evaluation (OT&E) processes, while valuable and necessary, are at times excessive, non-standard across the services, and not particularly well-suited to evaluating software and IT applications, all of which adds to time spent on compliance and adding to cost.

Management Flexibility vs. Oversight

Finding: The Congress, DoD and its industry partners have constructed a complex acquisition system designed first and foremost to promote fairness and prevent abuse. Unlike its commercial counterparts, which emphasize time-to-market and competition, the DoD system (in fact, all of federal procurement) is process driven and encrusted with a statute and regulatory-driven organizational structure that confuses oversight with management review.

Discussion: Law, policy and regulation stretching from the Congress, through the Office of Federal Procurement Policy (in OMB), to the various departments and agencies have layered the acquisition process with organizational entities ostensibly designed to protect the government from waste, fraud and abuse, and to ensure good stewardship of the taxpayer's money. Noble in principle, such constraints come with a cost. Ranging from congressional hearings that, of recent, have taken on the appearance of "show trials" rather than serious inquiries, to Departmental 5000-series milestone reviews and the myriad of pre-reviews and reporting requirements that lead to decision milestones, the process has become risk-averse, cost insensitive, failure intolerant, somewhat adversarial; and has given rise to a bureaucratic labyrinth that makes it all but impossible to assign accountability. According to the Defense Acquisition Performance Assessment Panel: "The oversight process allows staff to assume de-facto program authority, stop progress and increase program scope." (Kadish, 2005) A program manager's task becomes meeting program review schedules over which he/she has no control versus program management activities over which they do. Further, the lag between legal and regulatory pronouncements designed to improve the process and their actual implementation in organizational policy can be a matter of years—thus rendering the intended improvements moot with regard to programs in progress or overcome by events with respect to new starts. Finally, the time spent on policy compliance reporting and other mandated documentation—increasingly being done by contractors—adds to cost and schedule. It may satisfy higher echelon desires to have data to compare across programs, but is rarely time-sensitive enough for day-to-day program management needs.

Funding Stability for Joint Service Programs

Finding: The incremental, annual funding of joint programs is especially susceptible to fluctuating budget allocations as Services change their programming priorities. It is an unfortunate but persistent practice in the Defense Department to underprogram in the out-years, so that when those years arrive, in order to keep the more mature programs alive, funds must be reallocated from newer starts—which then create the same demands as they mature. The result, in joint programs especially, is a reduction in promised capabilities, delays in delivery and further erosion of trust in the joint procurement process.

Discussion: Turbulence in funding stability starts at the top. Even though DoD began to submit biennial budgets in 1988, Congress' annual authorization and appropriations process keeps the efficient structuring of program spending risky. The problem is further complicated by the frequent inability to pass defense measures, in particular, the Defense Authorization Act, on time and in time to effect a smooth funding transition from year-to-year. What is, in effect, a guessing game on the part of Service budgeteers—in conjunction with the aforementioned "bow-wave" effect—puts joint programs at particular funding risk because they depend on multiple budget lines rather than a single source. Other factors contribute to instability, none more so than the faulty assumption that the winning contractor's bid price accurately represents actual program cost. Such contract award policy is required by federal law, and coupled with the military services' penchant for subscribing to point cost estimates rather than cost ranges based on program maturity, ignores the historical reality that such bids are typically undervalued with no provision for management reserves when and if unforeseeable program changes occur. This instability typically results in contract renegotiation, reduced capabilities or smaller purchase quantities.

Lack of Ownership on Part of Oversight Organizations

Finding: The term "lack of ownership" is misleading. While semantically accurate, in practice many oversight organizations do claim to "own" the program, often to the point of confusing who is actually in charge. What is really missing, however, is ownership in the form of responsibility for program success; serious interest in its outcome; or, accountability for its failures or shortcomings.

Discussion: Government oversight regimes come into existence in one of two ways: either through explicit design of the Constitution (Article I, Section 8) or by subsequent Acts of Congress embodied in Public Law (e.g., the National Security Act of 1947, the Goldwater-Nichols Act of 1986, *et al*). The proliferation of such organizations over time, however, is tied less to their specific authorization than to the general administrative growth in government, which seeks to prevent possible abuse, right some earlier wrong, protect the citizenry or exert more control in cases of perceived mismanagement. Once commissioned by whatever authority, such mechanisms are hard to undo, resulting in today's complex often duplicative weir of oversight architectures. Bureaucracies establish rules based on interpretations of their charters and build individual cultures that can, over time, become self-perpetuating ends in themselves. When this happens the goals of the entity overseen become secondary to the preservation of the overseeing organization; hence, the blurring of responsibility and the impossibility of assigning accountability.

Observations on Proximate and Ultimate Causes

Legal

1. Dating to the report of the President's Blue Ribbon Commission on Defense Management (Packard Commission) in 1986, there have been at least nine commissions and panels that have urged reform to the acquisition process. Starting with the Federal Acquisition Streamlining Act of 1994, Congress sought to give DoD greater authorities over its system. Other legislation and regulation followed: the Information Technology Management Reform Act of 1995, the Federal Acquisition Reform Act of 1996, revisions to Part 15 of the Federal Acquisition Regulations in 1997, the Services Acquisition Reform Act of 2003. The problem with these and subsequent legislation (Title VIII of the National Defense Authorization Acts stretching back to 2004 have stipulated 301 individual constraints regarding acquisition policy, management and related matters) is that reform-minded legislation is simply not practical because it attempts to impose uniform requirements for acquisition programs, despite that fact that no two programs are alike. (Fox, 1988)

2. The Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433) needs to be re-examined with respect to the acquisition chain of command. Removing the Service Chiefs from that chain is widely thought to have contributed to the "lack of ownership" problem, and possibly to funding instability. (CSIS, 2005)

3. Congress, in its deliberative process of compromise, is prone to leave terms undefined and provisions unclear so that no one side's solutions are precluded. The executive branch is put in a position of interpreting the provision, often without legislative history to guide it. (Preston, 1986)

Regulatory

1. The Packard Commission elevated the "administration" of acquisition over the purposes of acquisition. In the words of former Deputy Secretary of Defense John Hamre, "[W]e raised to highest priority the 'gunsmithing' of the acquisition process, but we lost the 'marksmanship' of purpose—what are we trying to accomplish." Although the DoD 5000-series guidance was drastically compressed in the 2003 revision, the system remains process driven and encrusted in layers of regulatory and policy stricture.

2. In the 1990s, the end of the Cold War and the rise of technical innovation and excellence in the commercial private sector encouraged the government to move to procurement of commercial items over manufactures developed solely for the use of the government. DoD Commercial Acquisition Policy received emphasis beginning in 2001, but the transition has been slow and uneven. Much of the cause is traced to acquisition processes designed to procure hardware end-items, not cutting edge, rapid turnover technology, which is more typically an information technology, software, or subsystem component part.

3. Over 60 percent of procurement dollars today go to the purchase of services. The regulatory regime is not geared for, nor is the acquisition workforce adequately trained in, procurement of services. This shortcoming is even more pronounced in the oversight and management of service contracts, which are in increasing number being administered with contract assistance.

Cultural

1. An acquisition culture exists throughout DoD. Culture—defined as the behavior of the participants in the acquisition process in DoD and the Congress—is an interaction of the participants rather than a methodological procedure. (GAO, 1990) Deborah Frank writing in the Acquisition Review Quarterly, Summer 1997, describes it this way: "Given this acquisition culture, participants operate within its formal and informal rules and expectations. Roles and rules are defined; the importance of winning is understood. Program survival is intertwined with participants' needs—all participants. These include the military services and the Office of the Secretary of Defense (OSD), which feel a need to perpetuate a mission; contractors, who want to sustain business and acquire profits; overseeing organizations, which want to find and fix problems; Congress, which needs to satisfy the public (and individual members, their constituencies); and program managers, who want to maintain or enhance their reputations. To further complicate the culture, the short-term involvement of many participants encourages short term payoffs."

2. The environment into which any would-be acquisition reform is introduced is political. That said, Congress must be a willing participant to fundamental reform, i.e., willing to relinquish several degrees of micromanagement; and, willing to remove themselves to active oversight of the "process" instead of the "programs."

3. A cultural derivative of the political environment is the relationship between buyer and provider, e.g., DoD and the private/defense sectors keep each other at arm's length and remain adversarial. Such a structure inhibits the free flow of information and imposes a regulatory cost burden on industry to ensure compliance with the system's rules.

Organizational

1. Large bureaucracies (although today's acquisition workforce is smaller by historical standards) are established in DoD to administer the acquisition system. Such organizational arrangements create unbreakable "fiefdoms" that add to the length of time it takes to make decisions and give rise to a risk-averse climate in which accountability is suppressed.

2. According to the Defense Acquisition Performance Assessment, organizational values, which may differ between process owners and participants, often lead to incompatible behaviors. They point to unintended negative consequences of organizational processes and practitioners operating independently of one another.

3. If organizations are the process owners, concerned with regulatory compliance, cost, schedule, program control and oversight, they must contend also with other participants—both inside and outside the organization—who have different goals and values. On the inside, the workforce may be interested from a personal standpoint in stability, gaining skills, experience, job satisfaction and promotion. Their outside industrial partners have corporate interests at heart: survival, growth, predictability, stockholder value.

4. Today, the process, not the war fighter, has become the principal client of the system.

Acquisition Governance – Resolving Sources of Instability

Recommendations for the Department of Defense

Application of acquisition law, regulation and policy

1. Restate the virtue of the 5000-series procedures as guidelines, not checklists. Rote compliance should be based on the contribution of the procedural step to positive outcomes in performance, schedule and cost.
2. Apply a "reasonableness test" to the applicability of certain acquisition process steps when the item or service to be procured is commercial in nature or essentially a non-developmental item. Waive those process steps that add no value.

Managing joint programs and reacting to Service-specific concerns

3. Require an acquisition strategy (validated by the Service/Component Acquisition Executive) be negotiated as part of the approval of the Initial Capabilities Document. Condition program approval on a realistic plan to get from Milestone B, System Development and Demonstration (SDD), to Initial Operational Capability (IOC) in under 7 years.
4. Discipline the Technology Development Phase: eliminate technological risk prior to Milestone B or rewrite the Concept Decision. If it cannot be rewritten satisfactorily in terms of the requirement, conduct a new analysis of alternatives.

Management flexibility vs. oversight

5. Establish in the Concept Refinement Phase how the customer values cost, schedule, and performance. Manage risk to attain the customer's top priority, relegating the others to a performance standard of "best effort."
6. Consider the conclusions and recommendations of oversight organizations (excluding, of course, such oversight as has been codified in federal law) to be advisory, unless competent authority deems them mandatory. Competent authority may be the Program Manager, the PEO, the Service or Component Acquisition Executive, the Milestone Decision Authority, or other individual as designated by the Deputy Secretary of Defense at the inception of the program.

Funding stability for joint-service programs

7. Get real on costs. Point estimates may suffice for fitting programs into the Department's procurement topline, however, providing a range of possible program costs—narrowing the range as the program moves through its development cycle—will give credibility to the Department and notice to Congress that cost predication and system maturity are dependent variables. Nunn-McCurdy has it backward: the time for evaluating program cost realism is before the ceilings are breached, not after. Do this annually, not at program milestones.

Lack of ownership on part of oversight organizations

8. Insist that the organization/individual making a change in requirements after the Concept Refinement Phase identify the source of Service funding to pay for the change in program cost.

Recommendations for the Acquisition of IT

At our most recent meeting with our DISA colleagues, BENS was asked to think about what an ideal IT acquisition process would look like. An immediate observation was that the acquisition of IT presents a complex challenge, that is, many different disciplines must be satisfied (such as hardware, software, compatibility, scalability, availability of data, and many others) in parallel. Such acquisitions are not well suited to the prescribed DoD 5000-series model, which is designed primarily for the procurement of large systems and major end items and carried out in sequential fashion. Perhaps different processes apply to procurement of IT and services, for example. That question remains to be answered; however, we can make certain recommendations regarding areas where we believe IT acquisition processes can be improved without regard to changing the 5000-series procedures.

For the Future:

1. Use "time to market" as a controlling criterion with regard to acquisition of IT. Plan to deliver 80 percent of functionality at one year; 95 percent at three. This approach should lead to a preference for existing or near-term technology, smaller programs and buys to satisfy specific, not universal, requirements—and a mentality that the technology will be thrown away or retired to make room for new applications more frequently.

2. Discourage or disallow adding new requirements to existing IT infrastructure. New requirements should be for new technology, which can replace or supplement existing infrastructure.

3. Don't chase technology, but stay ahead of its use. Constantly be on the lookout for ways to shift applications to new platforms and uses of technology—or your customer will do it in spite of you.

4. Pioneer a centralized, joint certification authority for IT to eliminate redundant, serialized testing procedures.

5. Propose use of "best value" contracting for IT services when conducting public-private competitions under OMB Circular A-76. Best value allows tradeoffs in price and technical factors (like management capability, experience, and application of new technology) over "low price." [Would require reauthorization of Sect. 336 of the NDAA for FY 2004, P.L. 108-136]

6. Seek to eliminate Milestone-related certification regimes not particularly applicable to IT and return authority and responsibility for program evaluation to the MDA. Congressionally-mandated certifications are micro-management.

Conclusion

In a May 2008 letter to Joe Robert, BENS Chairman, and Chuck Boyd, its President & CEO, John Hamre, President and CEO of the Center for Strategic and International Studies reiterated his belief that, with respect to defense acquisition, "…the fundamental policy foundation is flawed, and we need to go back to reconsider the foundation." With regard to BENS, he said, "You could easily get trapped into yet another mechanical look at how to reform the acquisition system….If you don't look at the basics we will simply rework a broken system." Our belief is in consonance: Any attempt to fix to the system must first consider the antecedents of today's dysfunctional acquisition bureaucracy—the body of acquisition law. Decades of effort at reforming the Pentagon's acquisition system, including BENS' own Tail-to-Tooth Commission in 2001—all focusing on the south side of the Potomac River—have resulted in an environment correctly described as "distorted, inefficient, and ineffective."

Fundamental reform is something neither the Pentagon, nor even the Executive Branch, can resolve alone. The key to cultural change lies with the Congress, not the Administration. Two decades of accumulated acquisition law, accompanied by crippling, unintended consequences, must be combed, weeded and changed if we are to start altering a dysfunctional environment.

The assistance of the professionals at DISA helped us to understand some of the imperfections and impediments in the current system. These shortcomings by no means reflect on DISA as an organization. Instead they are impediments that permeate the entire DoD acquisition structure, and whose causes are rooted in the legal, regulatory, cultural and organizational elements that we have investigated.

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